

THE HONORABLE

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR FRANKLIN COUNTY

TYSON FRESH MEATS, INC., a Delaware
corporation,

No.

Plaintiff,

v.

DECLARATION OF KEVIN HUESER

EASTERDAY RANCHES, INC., a
Washington corporation,

Defendant.

I, Kevin Hueser, declare as follows:

1. I am over the age of 18 and have personal knowledge of the facts contained
herein.

2. I am the Senior Vice President for Beef Margin Management at Tyson Fresh
Meats, Inc. ("TFM"). In that position, I am responsible, in part, for overseeing TFM's

HUESER DECLARATION -1

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1 purchases of fed cattle from feedlots and other cattle producers. I have worked for Tyson in
2
3 various capacities for over 36 years.
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5 **I. BACKGROUND**

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8 3. TFM is a subsidiary of Tyson Foods, Inc. and is based in Dakota Dunes,
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10 South Dakota. It is a leading supplier of fresh "boxed" beef, pork sold to distributors and
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12 "case-ready" ground beef and pork products sold directly to retailers. TFM currently
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14 operates six beef processing plants in the following locations: (i) Pasco, Washington; (ii)
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16 Lexington, Nebraska; (iii) Dakota City, Nebraska; (iv) Joslin, Illinois; (v) Holcomb, Kansas;
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18 and (vi) Amarillo, Texas. TFM is one of the largest beef processors in the United States.
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20 The company's beef business generated almost \$15.8 billion in sales in fiscal year 2020.
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24 4. TFM purchases its cattle either through spot buys on the cash market or under
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26 contracts or marketing arrangements which commit the producer to deliver a certain number
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28 of cattle once they reach slaughter weight. The terms of these contracts and marketing
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30 arrangements vary by producer.
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33 5. "Feedlots" focus on raising cattle until they reach slaughter weight (typically
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35 1400 pounds) and generally purchase their cattle from breeders and cow/calf operations that
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37 will feed and care for younger calves. The time to maturity can vary depending on the age
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39 and weight of the cattle purchased by the feedlot. For example, cattle purchased at a weight
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41 of 700-800 lbs. (which would usually be between 6-7 months old) could take between 120-
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43 180 days to reach slaughter weight. Cattle purchased at 300-400 lbs. (2-3 months old)
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45 could take up to a year or more to reach a mature slaughter weight. The time to maturity can
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1 also vary depending on whether the cattle are put out to pasture and fed grass or whether
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3 they are kept in a feedlot and fed grain.
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5 **II. THE TYSON/EASTERDAY RELATIONSHIP**

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7 6. TFM has done business with Easterday Ranches, Inc. ("Easterday"), a cattle
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9 producer and feedlot operator, for several years. Under its agreement with TFM, Easterday
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11 committed to procure and deliver slaughter-ready cattle to TFM beef processing plants, with
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13 TFM funding 100% of the procurement, feeding and care costs. Nearly all of the cattle fed
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15 by Easterday under the terms of these agreement were to be supplied to TFM's beef
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17 processing plant in Pasco, Washington. A true and correct copy of the agreement between
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19 TFM and Easterday, dated February 20, 2017, is attached as Exhibit A. It was amended
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21 effective August 20, 2020 to extend the term of the agreement through August 20, 2021. A
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23 true and correct copy of that amendment is attached as Exhibit B.
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28 7. Under the terms of the agreement, Easterday was required to procure "feeder
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30 cattle" and provide feeding space at its ranch or affiliated feedyards. Exhibit A, at 1.
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32 Easterday committed to provide supporting documentation regarding procurement costs
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34 showing the type, weight, kind and lot designation of the feeder cattle to be purchased, along
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36 with an estimated breakeven calculation for each lot of cattle. *Id.* at 1 ("Funding of Cattle").
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38 Upon TFM's reimbursement for the purchase of those cattle, Easterday would provide at
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40 TFM's request title documents evidencing TFM's ownership of the cattle. *Id.*
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44 8. The agreement also committed Easterday to document the feed and grow
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46 costs for cattle purchased under this program. Easterday was to bill TFM twice every month
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1 for those costs and support those requests for reimbursement with accurate bills showing the
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3 feed and grow costs for each lot of cattle. *Id.* at 2 (“Grow Costs”). TFM would then pay
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5 those Grow Costs.
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8 9. Once the cattle reached slaughter weight, Easterday was committed to supply
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10 them to TFM for slaughter. The agreement provided for TFM to pay Easterday the current
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12 market value for the cattle, less certain costs including the procurement costs and the feed
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14 and grow costs that had been advanced by TFM, interest on those costs, other adjustments
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16 and, initially, a \$15/head return. TFM would either then owe Easterday, or vice versa,
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18 depending on the current market value of the cattle. *Id.* at 3-4.
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22 10. Cody Easterday, the president of Easterday, personally guaranteed
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24 Easterday’s full and timely payment, performance and satisfaction of all obligations under
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26 this agreement. TFM was unwilling to enter into the agreement without such a guarantee.
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28 *Id.* at 5.
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30 **III. DISCOVERY OF THE FRAUD**

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33 11. In the fall of 2020, TFM began looking more closely at the level of capital
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35 investment it had made in its cattle procurement operations. I received a report from our
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37 accounting department showing TFM’s current investment in cattle it had purchased under
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39 the agreement with Easterday. I recall that investment was over \$300 million.
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42 12. In early to mid-November, I spoke to Justin Nelson, TFM’s Vice President of
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44 Cattle Procurement about the Easterday inventory. I asked him to follow up and investigate.
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1 whether that level of capital investment at Easterday consisted solely of fed cattle and, if so,
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3 where all of those heads of cattle were located.
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5 13. On the evening of Monday, November 30, Justin called me at home. He told
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7 me that he and TFM's local cattle buyer in Pasco had investigated the issue and had talked
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9 to Cody Easterday about his inventory of cattle that TFM had purchased. Justin told me that
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11 Mr. Easterday had confessed that he had submitted invoices to TFM for payment for cattle
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13 that did not actually exist. According to Justin, Mr. Easterday admitted that he done so for
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15 approximately 200,000 head of cattle over a period of time.
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18 14. That same evening, I alerted other TFM executives about this problem. This
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20 began an intense week of meetings as we began to learn about the extent of this fraud and to
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22 develop plans for how to address it.
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25 15. On the morning of December 1, four of us from Tyson conducted a Zoom
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27 call with Mr. Easterday. Included on that call from Tyson were Shane Miller (General
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29 Manager for Beef), Leah Anderson (Senior VP Operations-Finance & Accounting), Adam
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31 Deckinger (VP and Associate General Counsel) and me. During this call, Mr. Easterday
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33 admitted that he owed us 200,000 head of cattle. He also agreed to have auditors come out
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35 to his site immediately. These auditors were already on the ground for a day and a half by
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37 the time I made my trip out to Pasco.
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41 16. Later that day, Mr. Easterday called me directly. During that call, he asked
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43 that Tyson pay him \$1.7 million in feed costs and said he could not keep operating without
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45 that payment. I know that TFM investigated the possibility of paying Easterday's vendors
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1 directly instead of continuing to give Mr. Easterday money without knowing for certain
2 whether that money was actually being used to feed our cattle.
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5 17. On Thursday, December 3, I traveled to Pasco for meetings with Mr.
6 Easterday. Other senior executives, including Shane Miller and Leah Andersen, also came
7 to Pasco for these meetings. On December 3 and 4, the three of us held a total of two
8 meetings with Mr. Easterday in which he confessed to us how he had defrauded TFM over
9 several years.
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16 18. Mr. Easterday admitted that he had submitted invoices to TFM for cattle that
17 did not, in fact, exist. He used the phrase that he "owed" us 200,000 cattle. He initially
18 claimed that this scheme began in 2017. When we later confronted him with evidence that it
19 actually began sometime in 2016, he agreed that was probably correct. He showed us how
20 he meticulously kept track of the cattle that TFM had paid for, both those that existed and
21 those that did not.
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30 19. He also admitted what he did with the millions of dollars that he had stolen
31 from TFM. He said he had lost all of the money on the futures market -- specifically, he
32 said he "had pissed it away on the Merc," a reference to the Chicago Mercantile Exchange.
33 A big part of that conversation was Mr. Easterday's continued request for money which he
34 claimed he needed to keep operating.
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42 20. I was struck by Mr. Easterday's demeanor during these meetings. While he
43 did get a little teary eyed at times, he was largely very straightforward and stoic. He did not
44 show the remorse that I expected from someone who had defrauded our company out of
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1 hundreds of millions of dollars. At one point, I asked him why he had not come to us years
 2 earlier to seek some help, instead of continuing to dig himself into a deeper and deeper hole.
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 4 He just replied that he probably should have done that, and that he had "screwed up."
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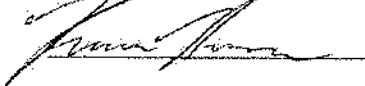
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 8 21. I stayed in Pasco until Sunday, December 6. Apart from my meetings with
 9 Mr. Easterday, I toured all of the feedlots and grow yards where TFM cattle were located.
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 11 My primary focus was to assess the condition of the cattle and to ensure they were being
 12 treated properly. TFM also operated several drones above those locations for the purpose of
 13 counting the number of cattle that were located on those properties. That count confirmed
 14 that the number of actual cattle was far less, by hundreds of thousands, than the number of
 15 cattle that TFM had paid Easterday for.
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 19 22. It appears as of the time of this declaration that there are approximately
 20 54,000 cattle owned by TFM that are located on Easterday's feedlots and grow yards. Those
 21 cattle are of various ages and various weights. Most are not yet ready to be sent to our
 22 Pasco plant. Those cattle require continued feeding, maintenance and other care, on a daily
 23 basis. Without such care, the value of those cattle will quickly and dramatically deteriorate.
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 27 23. On Friday afternoon, January 22, 2021, I, along with Leah Andersen and
 28 Shane Miller of Tyson, spoke with Cody Easterday and Peter Richter, a financial advisor to
 29 Easterday. Mr. Easterday told us that they were planning to sell the "North Lot" within the
 30 next few days. I am familiar with the North Lot. It is one of Easterday Ranches' feedlots, is
 31 quite valuable, and is, according to Mr. Easterday, unencumbered.
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1 I declare under penalty of perjury under the laws of the State of South Dakota that
2 the foregoing is true and correct.
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4 Executed this 25 day of January, 2021, at Dakota Dunes, South Dakota.
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9 Kevin Hueser
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HUESER DECLARATION -8

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